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E.O. 12958: DECL: 11/09/2028  
TAGS: PGOV KDEM PREL HO  
SUBJECT: HONDURAS: SUPREME COURT CASES COULD HAVE  
SIGNIFICANT EFFECT ON PRIMARY ELECTIONS

REF: A. TEGUCIGALPA 787  
    1B. TEGUCIGALPA 171  
    1C. 07 TEGUCIGALPA 1915

Classified By: Ambassador Hugo Llorens, reasons 1.4 (b & d)

11. (C) SUMMARY: In separate meetings with the Ambassador, Attorney General Leonidas Rosa Bautista and President of the Supreme Court Vilma Morales both explained their views on two cases likely to be heard by the Supreme Court which could be of potential significance on the presidential elections, especially for popular Vice President and Liberal Party hopeful Elvin Santos' candidacy. One petition, filed by a state attorney, challenges the legality of the constitutional reforms of 2000-2001 which created a single Vice Presidency in lieu of three Presidential Designates, and thereby questions the legitimacy of the entire current electoral process. The second issue is the disqualification of Santos by the Supreme Electoral Tribunal (TSE), which Santos must appeal to the Supreme Court by November 14. While Supreme Court President Morales believes Santos will lose his appeal, she said that she expected the court to rule in a way that would not undermine the current electoral process. In both meetings the Ambassador stressed the importance of dealing with the issue in strict adherence to Honduran law and the letter of the constitution, while still validating the legitimacy of the ongoing electoral process. End summary.

12. (C) Rosa and Morales spoke with the Ambassador in separate meetings on November 7, in which they confirmed that a government attorney had filed a petition before the Supreme Court arguing that the bipartisan "pact" of 2000 (ratified in 2001), a set of constitutional amendments which created a single Vice Presidency in place of three weaker "designates," was unconstitutional and therefore the current election process should be declared void because the tickets are for a President and single Vice President. Rosa was concerned that the petition could trigger a constitutional crisis and derail the elections.

13. (C) Both Rosa and Morales explained very clearly why they believed the reforms were indeed unconstitutional and therefore the system of government should revert back to the original 1982 version of the Constitution with three designates. They noted that according to Article 374 of the Constitution of 1982, several key articles were deemed "untouchable," including the definition of the offices of

President and three Presidential Designates. Morales, however, reassured the Ambassador that the Supreme Court did not function in a vacuum, and would appreciate the broader implications of invalidating a presidential election process already underway. She noted that the Constitution allowed for decisions such as these to be applied to future elections, leaving the current process intact and averting a constitutional crisis.

¶4. (C) With regard to the case of Santos' candidacy for President (Refs A and B), both explained that the Constitution was clear: anyone who had carried out the duties and role of President, even if for only a day, whether by means of election or as a placeholder in the absence or incapacitation of the actual President, was disqualified from running for President. Both were of the view that the August 2008 disqualification of Santos by the TSE (Ref A) would hold if/when the Supreme Court ruled on it. Morales added that the only person who had served as acting President during the Zelaya administration was Santos. She acknowledged that President of Congress (Santos' rival Liberal candidate for President) Roberto Micheletti held a role that was in line of Presidential succession, but he never in fact served as acting President, and therefore was still eligible to run (Ref C). (NOTE: If Micheletti were also ineligible, the only remaining Liberal candidate would be the anti-American and the most leftist of the Liberal Party candidates, Eduardo Maldonado, but whom most observers give little chance of winning the nomination. End note.)

¶5. (C) Morales explained that the postponement of the primaries from November 16 to November 30 did not change the

November 14 deadline for Santos to file his appeal, but reassured the Ambassador that if Santos filed his appeal on the 14th, it would be practically impossible for the court to issue a ruling by November 30. She added that the Court would likely agree to hear the appeal, despite her personal opinion that he would be found ineligible, in case Santos had any new elements to add to the case. Therefore, Santos' campaign would be able to remain on the primary ballot through his proxy candidate, Mauricio Villeda, averting another potential election crisis, this time in the streets.

¶6. (C) Santos' candidacy would not be aided by the first case over the constitutionality of the "one-Vice President" reform, Morales added. Even if the office he held were deemed unconstitutional, Santos would be viewed as the single embodiment of the old designates, and therefore still disqualified.

¶7. (C) In both meetings the Ambassador stressed the importance of dealing with the issue in strict adherence to Honduran law and the letter of the constitution, while still validating the legitimacy of the ongoing electoral process. Both Morales and Bautista agreed that a strict interpretation of the constitution was essential for a credible ruling of this magnitude, but stressed that whatever the eventual ruling the court had to reaffirm and validate the ongoing primary elections process.

¶8. (C) COMMENT: The two cases described in this cable have been the latest source of rumor, speculation and forecasts of electoral difficulties in Honduras following the peaceful resolution of the primaries delay. Those fearing "continuismo" by Zelaya saw the potential for constitutional crisis in one, and elimination of all Liberal candidates but Zelaya's chosen successor in the other. The clear, salient explanations of these two arcane legal cases by Rosa and Morales not only have made some sense of the issues at hand, but do provide a way forward to reaffirm a final constitutional ruling on the Vice President ability to run for the Presidency, while still preserving the legitimacy of the ongoing electoral process. While an eventual ruling against a popular and charismatic presidential candidate seems increasingly likely, the situation could change if Santos wins the primary. At that point, the court would be faced with causing a constitutional crisis by eliminating one

of the two major party candidates chosen by the people. If Santos loses, than any decision against him would only affect future elections. Most importantly, the likely decisions have bases in reason and -- more importantly -- the law, and therefore should be seen by us as consistent with our overriding goal supporting democratic governance and constitutional rule in Honduras. End comment.

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